

GUARDIAN TITLE AGENCY, LLC

**3595 South Teller St., Suite 408
Lakewood, Colorado, 80235**

**MARKET CONDUCT EXAMINATION REPORT
as of December 31, 2002**

**COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**GUARDIAN TITLE AGENCY, LLC
3595 SOUTH TELLER STREET, SUITE 408
LAKEWOOD, COLORADO 80235**

**MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2002**

Prepared by

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&
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&
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January 22, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of Guardian Title Agency, LLC, has been conducted. The Company's records were examined at its office at 3595 South Teller Street, Suite 408, Lakewood, Colorado 80235.

The examination covered a one-year period from January 1, 2002 to December 31, 2002.

A report of the examination of Guardian Title Agency, LLC, is herewith, respectfully submitted.

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OF THE
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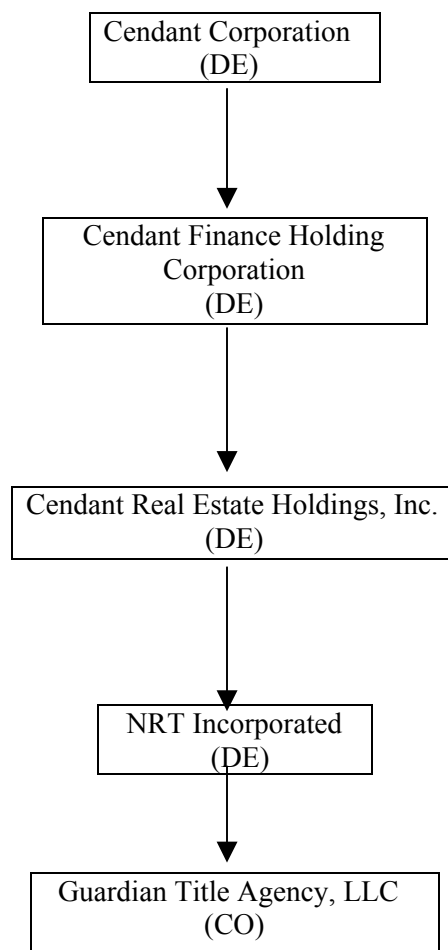
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COMPANY PROFILE

Guardian Title Agency, LLC was founded in March 1995, operating under the name of Equity Title Agency, LLC. At that time, it was owned by Orange Coast Title Company and Equity Title Agency, LLC and had 4-5 employees.

On September 30, 1998 Guardian (Equity) was purchased by NRT Colorado, Inc (CO). In January 1999, the name was officially changed to Guardian Title Agency, LLC, and currently has a staff of approximately 85 people.

NRT Colorado, Inc. is a subsidiary of NRT Incorporated (DE), which is in-turn a subsidiary of Cendant Real Estate Holdings, Inc. (DE). Cendant Real Estate Holdings, Inc. is a holding of Cendant Finance Holding Corporation (DE), under the parent Company of Cendant Corporation (DE). The following Organizational Chart shows the relationships between the various enterprises.



PURPOSE AND SCOPE OF EXAMINATION

The purpose of this examination was to audit the business practices of Guardian Title Agency LLC (hereinafter referred to as Company) as applicable to title insurance in the State of Colorado. This procedure is in accordance with section 10-1-203, C.R.S., which empowers the Commissioner to examine insurance companies. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to title insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and materials maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of underwriting and claims files that were systematically selected using ACL™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses only title insurance issues and contains information regarding exceptions to Colorado insurance laws. The examination included review of the following:

1. Operations
2. Sales and Marketing
3. Underwriting and Rating

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's title insurance Operations, Sales & Marketing, and Underwriting and Rating practices to determine compliance with Colorado insurance laws outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-4-404.5	Rating plans-P&C type II insurers-rules and regulations
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-11-101.	Short title.
Section 10-11-102.	Definitions.
Section 10-11-103.	Compliance with article required.
Section 10-11-104.	Corporate form required.
Section 10-11-105.	Financial requirements prior to the article.
Section 10-11-106.	Determination of insurability required.
Section 10-11-107.	Powers.
Section 10-11-108.	Prohibitions.
Section 10-11-109.	Unearned premium reserve.
Section 10-11-110.	Amount of unearned premium reserve-release.
Section 10-11-111.	Reserve for unpaid losses and loss expense.
Section 10-11-112.	Net retained liability.
Section 10-11-113.	Power to reinsure.
Section 10-11-114.	Legal investments and admitted assets.
Section 10-11-115.	Prior investments.
Section 10-11-116.	Title insurance agents licensed.
Section 10-11-117.	Title insurance agents-certain names prohibited.
Section 10-11-118.	Title insurance.
Section 10-11-119.	Laws applicable.
Section 10-11-120.	Corporate existence preserved.
Section 10-11-121.	Application of article-other laws applicable.
Section 10-11-122.	Title commitments.
Section 10-11-123.	Notification of severed mineral estates.
Regulation 3-5-1	Title Insurance
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests.
Regulation 5-1-10	Rate and Rule filing regulation
Regulation 6-4-1	Privacy of Consumer Financial And Health Information

Contract Forms and Endorsements

The following Title Insurance forms and endorsements were reviewed for compliance applicable to the period under examination:

Title	Form
Restrictions, etc. Improved land 1-4 Family Dwellings	100
Environmental Protection (Only for Residential Property)	140.1
ALTA Condominium Endorsement	115.1
ALTA Planned Unit Development	115.2
Variable Rate Mortgage (ALTA 6)	110.7
(Residential Extra Protection)(Only for 1-4 Family Dwellings)	130
Inflation (Only for use with ALTA Plain Language Policy)	CT-397
Variable Rate Mortgage (ALTA 6.2)	110.8
ALTA Loan Policy Jacket	FNTIC No. 1412
ALTA Owners Policy	FNTIC No. 1312

Sales and Marketing

For the period under examination, the examiners reviewed advertising and promotional materials provided by the Company.

Population	Sample Size	Percentage to Population
3	3	100%

Underwriting and Rating

The examiners reviewed the rate and fee filings, submitted to the Colorado Division of Insurance for the period under examination. This information was then compared against a sample of title policies and closing fees, rated by county, type of policy to determine compliance with filed base rates and fees.

Population	Sample Size	Percentage to Population
6,136	100	2%

EXAMINATION REPORT SUMMARY

The examination resulted in one (1) issue arising from the Company's apparent failure to comply with Colorado insurance laws that govern all Title Insurance Companies operating in Colorado. This issue involved the following category:

Underwriting and Rating:

In the area of Rating, one (1) compliance issue is addressed in this report. The issue pertains to Colorado insurance law requirements dealing with the rating and calculating of title insurance premium and closing fees. The issue is identified as follows:

- Failure, in some cases, to properly calculate and charge the scheduled rate/premium or fee for a policy of title insurance or a specified closing and settlement service.

It is recommended that the Company review its rating and fee calculation procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

GUARDIAN TITLE AGENCY LLC

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

Underwriting and Rating

Issue A: Failure, in some cases, to properly calculate and charge the scheduled rate/premium or fee for a policy of title insurance or a specified closing and settlement service.

Colorado Amended Regulation 3-5-1, Title Insurance, promulgated under the authority of 10-1-109, 10-3-1110, and 10-4-404(1), C.R.S., states, in part:

Section 4. Rules Regarding Rates And Fees

- D. Only one schedule per title insurance company shall be in use at any one time, and *no rate or fee can be made unless it is on the currently effective schedule at the time which the commitment and/or policy or closing and settlement service is contracted.* [Emphasis added.] Title insurance companies may not use different rates for different title insurance agents for the same risk in the same county.

Section 5. Rules Regarding Standards Of Conduct For Title Insurance Entities

- A. The following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:
9. *Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.* [Emphasis added.]

The following chart illustrates the significance of error versus the population and sample examined:

Title insurance policies/commitments/settlement statements			
Population	Sample Size	Number of Exceptions	Percentage to Sample
6,136	100	13	13%

An examination of 100 policies/commitments and settlement statements representing approximately 2 % of those policies/commitments and settlement statements issued by the Company during the examination period, showed thirteen (13) exceptions (or 13% of the sample) wherein the Company failed to charge the correct title premium or express mailing fee in accordance with filed rates and fees as required by Colorado insurance law.

In eleven (11) exceptions, the Company failed to charge the correct premium for title insurance coverage. In two (2) exceptions, the Company did not charge pursuant to its fee filing. Its filed fee was \$15.00 for “overnight or standard letter delivery” but no charge was actually made for the service.

Three (3) exceptions involved overcharges of \$11.00, \$14.00 and \$45.00 totaling \$70.00. Ten (10) exceptions involved undercharges of \$10.00, \$12.00, \$15.00, \$18.00, \$19.00, \$20.00, \$43.00, \$45.00, \$55.00 and \$60.00 totaling \$297.00. The net result of all exceptions was an undercharge of \$227.00.

Recommendation #1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Amended Colorado Insurance Regulation 3-5-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its procedures relating to the accuracy of title insurance premiums and express delivery fee charges and implemented necessary changes to ensure compliance with Colorado insurance law.

Summary of Recommendations**GUARDIAN TITLE AGENCY LLC**

<u>ISSUE</u>	<u>REC NUMBER</u>	<u>PAGE NUMBER</u>
Underwriting and Rating		
Issue A: Failure, in some cases, to properly calculate and charge the scheduled rate/premium or fee for a policy of title insurance or a specified closing and settlement service.	1	14

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Participated in this examination and in the preparation of this report.